

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Reinhard WALTER and Petra OHAGE-SPITZLEI

U.S. Serial No.: 09/700,320

Corresponding to the National Phase in the US of International Application PCT/EP99/02969

International Filing Date: 03 May 1999 (03.05.99)

Title: Effervescent Preparations

BOX PCT

Assistant Commissioner for Patents  
Washington, D.C. 20231

Attention: Mr. John Anderson

**RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS**  
**(UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US))**

Dear Sir:

This replies to the Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) mailed on 19 December 2000. A copy of the Notification of Missing Requirements (Form PCT/DO/EO/905) is enclosed.

The Notification of Missing Requirements enclosed a Notification of a Defective Oath or Declaration indicating that the Combined Declaration and Power of Attorney filed on 14 November 2000 is not acceptable because the name of the second named inventor differs from the name appearing in the international application.

Applicants note that a request to record the change of name for the second named inventor from Petra OHAGE to Petra OHAGE-SPITZLEI was filed with the International Bureau. Enclosed is a copy of the Notification of the Recording of a Change (Form PCT/IB/306) showing the change in the name of the inventor received from the International Bureau.

Accordingly, Applicants believe that the Declaration filed on 14 November 2000 satisfies the requirements of 37 C.F.R. §1.497(a)(b). Another copy of the Declaration filed on 14 November 2000 is enclosed for the convenience of the Office.

Respectfully submitted,

*Jan. 10, 2001*  
Date

*Jerrie L. Chiu*  
Jerrie L. Chiu  
Attorney for Applicants  
Reg. No. 41,670  
Bayer Corporation  
400 Morgan Lane  
West Haven, CT 06516-4175  
Phone: (203) 812-3964

RECEIVED

JAN 2 2001



UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

Address: ASSISTANT COMMISSIONER FOR PATENTS

Box PCT

Washington, D.C. 20231

U.S. APPLICATION NO. 09/700320	FIRST NAMED APPLICANT WALTER R	ATTY. DOCKET NO. EA 32 842
JEFFREY M. GREENMAN VICE PRESIDENT PATENTS AND LICENSING BAYER CORPORATION 400 MORGAN LANE WEST HAVEN, CT 06516		
INTERNATIONAL APPLICATION NO. PCT/EP99/02969		
I.A. FILING DATE 03 MAY 99	PRIORITY DATE 15 MAY 98	
DATE MAILED: 19 DEC 00		

**NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)**

1. The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as

- ☐ a Designated Office (37 CFR 1.494),  
☒ an Elected Office (37 CFR 1.495):

☒ U.S. Basic National Fee.

☒ Copy of the international application in:

- ☒ a non-English language.  
☐ English.

☒ Translation of the international application into English.

☒ Oath or Declaration of inventors(s) for DO/EO/US.

☐ Copy of Article 19 amendments.

☐ Translation of Article 19 amendments into English.

☐ The International Preliminary Examination Report in English and its Annexes, if any.

☐ Translation of Annexes to the International Preliminary Examination Report into English.

☒ Preliminary amendment(s) filed NOV 14 2000 and \_\_\_\_\_.

☒ Information Disclosure Statement(s) filed NOV 14 2000 and \_\_\_\_\_.

☐ Assignment document.

☐ Power of Attorney and/or Change of Address.

☐ Substitute specification filed \_\_\_\_\_.

☐ Verified Statement Claiming Small Entity Status.

☒ Priority Document.

☒ Copy of the International Search Report ☒ and copies of the references cited therein.

☐ Other:

2. The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

☐ a. Translation of the application into English. Note a processing fee will be required if submitted later than the appropriate 20 or 30 months from the priority date.

☐ The current translation is defective for the reasons indicated on the attached Notice of Defective Translation.

☐ b. Processing fee for providing the translation of the application and/or the Annexes later than the appropriate 20 or 30 months from the priority date (37 CFR 1.492(f)).

☒ c. Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date.

☒ The current oath or declaration does not comply with 37 CFR 1.497(a) and (b) for the reasons indicated on the attached PCT/DO/EO/917.

☐ d. Surcharge for providing the oath or declaration later than the appropriate 20 or 30 months from the priority date (37 CFR 1.492(e)).

3. Additional claim fees of \$ \_\_\_\_\_ as a ☐ large entity ☐ small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due. See attached PTO-875.

**ALL OF THE ITEMS SET FORTH IN 2(a)-2(d) AND 3 ABOVE MUST BE SUBMITTED WITHIN ONE MONTH FROM THE DATE OF THIS NOTICE OR BY ☐ 21 OR ☒ 31 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.**

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

4. Translation of the Annexes **MUST** be submitted no later than the time period set above or the annexes will be cancelled. Note processing fee will be required if submitted later than 30 months from the priority date.

5. ☐ The Article 19 amendments are cancelled since a translation was not provided by the appropriate 20 (37 CFR 1.494(d)) or 30 (37 CFR 1.495(d)) months from the priority date.

Applicant is reminded that any communication to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above. (37 CFR 1.5)

***A copy of this notice MUST be returned with this response.***

Enclosed:

☒ PCT/DO/EO/917

☐ Notice of Defective Translation

☐ PTO-875

FORM PCT/DO/EO/905 (December 1997)

John Anderson

Telephone: 703-308-9116



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Address: ASSISTANT COMMISSIONER FOR PATENTS  
Washington, D.C. 20231

U.S. APPLICATION NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/700320	WALTER	R
		LEA 32 842
INTERNATIONAL APPLICATION NO.		
PCT/EP99/02969		
I.A. FILING DATE		PRIORITY DATE
03 MAY 99		15 MAY 98
DATE MAILED: 19 DEC 00		

JEFFREY M GREENMAN  
VICE PRESIDENT PATENTS AND LICENSING  
BAYER CORPORATION  
400 MORGAN LANE  
WEST HAVEN, CT 06516

#### NOTIFICATION OF A DEFECTIVE OATH OR DECLARATION

This application fails to contain an oath or declaration acceptable under 35 U.S.C. 371 (c)(4) for entry into the national stage in the United States of America. The period within which to correct these requirements and avoid abandonment is set in the accompanying Office action.

A new oath or declaration, identifying this application by the international application number and international filing date is required. The oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it:

1. ☐ is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68.
2. ☐ does not identify the specification to which it is directed.
3. ☒ does not identify the inventor(s). 2nd inventor name is different on dec than on the IA.
4. ☐ does not identify the citizenship of each inventor.
5. ☐ does not state the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

FAILURE TO SUBMIT AN OATH OR DECLARATION IN COMPLIANCE WITH 37 CFR 1.497(a) AND (b) WITHIN THE TIME PERIOD SET WILL RESULT IN FAILURE TO ENTER THE NATIONAL STAGE AND THE ABANDONMENT OF THE APPLICATION.

Additionally, the oath or declaration does not comply with 37 CFR 1.63 in that it:

1. ☐ does not identify the city and state or city and foreign country of residence or each inventor.
2. ☐ does not state that the person making the oath or declaration:
  - a. ☐ has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration.
  - b. ☐ acknowledges the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.
3. ☐ does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application serial number, country, day, month, and year of its filing.
4. ☐ does not state that the person making the oath or declaration acknowledges the duty to disclose information which is material to patentability as defined in 37 CFR 1.56 which became available between the filing date of the prior application and filing date of the continuation in part application which discloses and claims subject matter in addition to that disclosed in the prior application (37 CFR 1.63(d)).

John Anderson

Telephone: 703-308-9116

FORM PTO-1390  
(REV 11-98)

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE

ATTORNEY'S DOCKET NUMBER

**TRANSMITTAL LETTER TO THE UNITED STATES  
DESIGNATED/ELECTED OFFICE (DO/EO/US)  
CONCERNING A FILING UNDER 35 U.S.C. 371**

Le A 32 842

U.S. APPLICATION NO. (If known, see 37 CFR 1.5)

09/700,320

INTERNATIONAL APPLICATION NO.

PCT/EP99/02969

INTERNATIONAL FILING DATE

03 May 1999 (03.05.99)

PRIORITY DATE CLAIMED

15 May 1998 (15.05.98)

TITLE OF INVENTION

EFFERVESCENT PREPARATIONS

APPLICANT(S) FOR DO/EO/US

WALTER, Reinhard and OHAGE-SPITZLEI, Petra

Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:

1. ☐ This is a **FIRST** submission of items concerning a filing under 35 U.S.C. 371.
2. ☒ This is a **SECOND** or **SUBSEQUENT** submission of items concerning a filing under 35 U.S.C. 371.
3. ☐ This express request to begin national examination procedures (35 U.S.C. 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. 371(b) and PCT Articles 22 and 39(I).
4. ☐ A proper Demand for International Preliminary Examination was made by the 19th month from the earliest claimed priority date.
5. ☐ A copy of the International Application as filed (35 U.S.C. 371(c)(2))
  - a. ☐ is transmitted herewith (required only if not transmitted by the International Bureau).
  - b. ☐ has been transmitted by the International Bureau.
  - c. ☐ is not required, as the application was filed in the United States Receiving Office (RO/US).
6. ☐ A translation of the International Application into English (35 U.S.C. 371(c)(2)).
7. ☐ Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3))
  - a. ☐ are transmitted herewith (required only if not transmitted by the International Bureau).
  - b. ☐ have been transmitted by the International Bureau.
  - c. ☐ have not been made; however, the time limit for making such amendments has NOT expired.
  - d. ☐ have not been made and will not be made.
8. ☐ A translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).
9. ☐ An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)).
10. ☐ A translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)).

**Items 11. to 16. below concern document(s) or information included:**

11. ☐ An Information Disclosure Statement under 37 CFR 1.97 and 1.98.
12. ☐ An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.
13. ☐ A FIRST preliminary amendment.  
☐ A SECOND or SUBSEQUENT preliminary amendment.
14. ☐ A substitute specification.
15. ☐ A change of power of attorney and/or address letter.
16. ☒ Other items or information:
  - 1) Response to Notification of Missing Requirements;
  - 2) Copy of the Notification of Missing Requirements;
  - 3) Copy of PCT Notice of the Recording of a Change (PCT/IB/306); and
  - 4) Copy of Declaration and Power of Attorney originally filed on 14 November 2000.

01/16/2001 HNGUYEN 00000089 133372 09310020

01 FC:154

130.00 CH

**CERTIFICATION OF MAILING UNDER 37 C.F.R. 1.8(a)**

I hereby certify that this correspondence and any papers referred to as attached are being deposited, on the date shown below, with the United States Postal Service, with sufficient postage, as first class mail in an envelope addressed to Box PCT, Assistant Commissioner for Patents, Washington, D.C. 20231.

Date: JAN 10 2001

  
 Beatriz Alviz

U.S. APPLICATION NO. (if known) 31 C  
09/700,320

INTERNATIONAL APPLICATION NO.  
PCT/EP99/02969

ATTORNEY'S DOCKET NUMBER  
Le A 32 842

17. ☐ The following fees are submitted:

**BASIC NATIONAL FEE (37 CFR 1.492 (a) (1) - (5))**

Neither international preliminary examination fee (37 CFR 1.482)  
nor international search fee (37 CFR 1.445(a)(2)) paid to USPTO  
and International Search Report not prepared by the EPO or JPO ..... \$970.00

International preliminary examination fee (37 CFR 1.482) not paid to  
USPTO but International Search Report prepared by the EPO or JPO ..... \$840.00

International preliminary examination fee (37 CFR 1.482) not paid to USPTO but  
international search fee (37 CFR 1.445(a)(2)) paid to USPTO ..... \$760.00

International preliminary examination fee paid to USPTO (37 CFR 1.482)  
but all claims did not satisfy provisions of PCT Article 33(1)-(4) ..... \$670.00

International preliminary examination fee paid to USPTO (37 CFR 1.482)  
and all claims satisfied provisions of PCT Article 33(1)-(4) ..... \$96.00

**ENTER APPROPRIATE BASIC FEE AMOUNT =**

**CALCULATIONS PTO USE ONLY**

Surcharge of \$130.00 for furnishing the oath or declaration later than ☐ 20 ☒ 30  
months from the earliest claimed priority date (37 CFR 1.492(c)).

CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE
Total claims	-20 =		X \$18.00
Independent claims	-3 =		X \$78.00

MULTIPLE DEPENDENT CLAIM(S) (if applicable) ..... +\$260.00

**TOTAL OF ABOVE CALCULATIONS =**

Reduction of 1/2 for filing by small entity, if applicable. A Small Entity Statement  
must also be filed (Note 37 CFR 1.9, 1.27, 1.28).

**SUBTOTAL =**

Processing fee of \$130.00 for furnishing the English translation later than ☐ 20 ☐ 30  
months from the earliest claimed priority date (37 CFR 1.492(f)).

**TOTAL NATIONAL FEE =**

Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be  
accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property

**TOTAL FEES ENCLOSED =**

Amount to be:  
refunded \$  
charged \$

a. ☐ A check in the amount of \$\_\_\_\_\_ to cover the above fees is enclosed.

b. ☒ Please charge my Deposit Account No. 13-3372 in the amount of \$ 130.00 to cover the above fees.  
A duplicate copy of this sheet is enclosed.

c. ☒ The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any  
overpayment to Deposit Account No. 13-3372 A duplicate copy of this sheet is enclosed.

**NOTE: Where an appropriate time limit under 37 CFR 1.494 or 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the application to pending status.**

SEND ALL CORRESPONDENCE TO

Jeffrey M. Greenman  
Vice President, Patents and Licensing  
BAYER CORPORATION  
400 Morgan Lane  
West Haven, CT 06516  
US

*Jerrie L. Chiu*  
SIGNATURE  
Jerrie L. Chiu

NAME

41,670

REGISTRATION NUMBER